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In re Application of	:	DECISION ON
Esko Siren	:	
Application No.: 09/381,441	:	
PCT No.: PCT/FI98/00239	:	PETITION UNDER
Int. Filing Date: 18 March 1998	:	
Priority Date: 20 March 1997	:	37 CFR 1.181
Attorney's Docket No.: 13025	:	
For: STRIPE-LINE INDUCTOR	:	

This Decision is in response to applicant's "PETITION FOR REVIVAL OF AN APPLICATION FOR PATNET ABANDONED UNAVOIDABLY UNDER 37 C.F.R. 1.137(a)," filed on 30 October 2000, which is being treated as a petition under 37 CFR 1.181 requesting the acceptance of the executed declaration form as timely filed since the Notification of Missing Requirements was not received. Since no petition fee is required for this petition, the \$130.00 is being refunded to applicant Deposit Account 19-1013.

BACKGROUND

On 18 March 1998, applicants filed international application PCT/FI98/00239, which claimed priority of an earlier Finland application filed 20 March 1997. A copy of the intentional application was transmitted on 01 October 1998 to the USPTO from the International Bureau. A DEMAND was timely filed on 20 October 1998 electing the United States. Accordingly, the thirty month (30) time period for paying the basic national fee in the United States of America expired at midnight on 20 September 1999.

On 20 September 1999, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No oath or declaration of the inventors accompanied the transmittal letter.

On 01 November 1999, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within one month from its 01 November 1999

date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 25 August 2000, a Notification of Abandonment was mailed to applicant's representative. It stated that the applicant has failed to properly respond to the notification of Missing Requirements (Form PCT/DO/EO/905), mailed 01 November 1999 within the time period set therein.

On 30 October 2000, applicants filed the instant petition accompanied, inter alia, with an executed declaration.

DISCUSSION

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that:

"The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

A review of the petition reveals that petitioner has not complied with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed for reply. Petitioner's statements on page 2, last paragraph is insufficient to establish failure to receive the Office communication without any corroborating evidence, e.g., a log showing the mailed received during the time period the office communication would have been received and a tickler sheet for 01 November 1999. In other words, to establish a showing nonreceipt of the Notification of Missing Requirements would require, at a copy of the docket report showing all replies docketed for a date of one month from the mail date of the nonreceived Office action.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned-application at this time is not appropriate.

RECOMMENDATION

As an alternative, applicants may request revival of the application via petition under 37 CFR 1.137(b).

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. Note MPEP 711.03(c)

This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

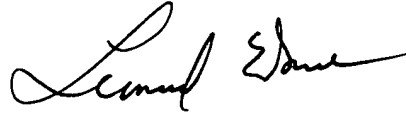
The application remains **ABANDONED**.

Applicant is required to provide the proper reply stated above within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the **ABANDONMENT** of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



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